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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,  
  
Respondent/Plaintiff,  
  
v.  
  
TREMAYNE REEVES,  
  
Petitioner/Defendant.

Case No. 2:12-cr-00201-KJD-VCF

**ORDER**

Presently before the Court is Petitioner’s Motion to Vacate, Set Aside, or Correct Criminal Convictions and Sentence Pursuant to 28 U.S.C. § 2255 (##64, 66). The Government filed a response (#72) to which Petitioner replied (#73).

**I. Background**

On May 14, 2013, Petitioner pled guilty to three counts of Hobbs Act robbery under 18 U.S.C. § 1951, and one count of use of a firearm during and in relation to a crime of violence under 18 U.S.C. § 924(c). Petitioner had a total offense level of 29 and criminal history category of IV, with a corresponding guideline range of 121–151 months, followed by an additional 84-month consecutive sentence, due to the 924(c) sentence enhancement. Without the 924(c) enhancement, Petitioner would have had a total offense level of 29 and criminal history category

1 of IV, with a corresponding guideline range of 121–151 months, but no additional 84-month  
2 consecutive sentence. Petitioner seeks relief from his sentencing enhancement imposed under  
3 924(c), arguing he is no longer eligible for it based on a new, substantive rule retroactively  
4 applicable to cases on collateral review.

## 5 II. Analysis

6 A federal prisoner may move to “vacate, set aside or correct” his sentence if it “was  
7 imposed in violation of the Constitution.” 28 U.S.C. § 2255(a). When a petitioner seeks relief  
8 pursuant to a right recognized by a United States Supreme Court decision, a one-year statute of  
9 limitations for seeking habeas relief runs from “the date on which the right asserted was initially  
10 recognized by the Supreme Court.” 28 U.S.C. § 2255(f)(3). The petitioner bears the burden of  
11 demonstrating that his petition is timely and that he is entitled to relief.

### 12 *A. Johnson v. United States Invalidates 18 U.S.C. § 924(c)(3)(B)*

13 As an initial matter, this Court finds that Johnson, in light of Dimaya, holds 924(c)’s  
14 residual clause unconstitutional. On June 26, 2015, the United States Supreme Court decided  
15 Johnson v. United States, finding the residual clause of the Armed Career Criminal Act  
16 (“ACCA”) violates the Constitution’s guarantee of due process. See Johnson v. U.S., 135 S. Ct.  
17 2551, 2557 (2015). On April 18, 2016, the Supreme Court held Johnson announced a new,  
18 substantive rule that has retroactive effect on cases on collateral review. See Welch v. U.S., 136  
19 S. Ct. 1257, 1268 (2016). On June 17, 2016, within the one-year statute of limitations, Petitioner  
20 filed the present motion based on the new, retroactively applicable rule announced in Johnson.

21 On April 17, 2018, the United States Supreme Court decided Sessions v. Dimaya,  
22 No. 15–1498, slip op. (Apr. 17, 2018), finding the residual clause of 18 U.S.C. § 16(b) to be  
23 unconstitutionally vague. The Supreme Court did so by expanding the logic of Johnson, stating  
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1 §16's residual clause violates the Constitution's guarantee of due process in the same way the  
2 ACCA's residual clause did. Dimaya, No. 151498, slip op., at 8–9. Based on the Court's  
3 willingness to expand the reach of Johnson to § 16(b) because it too shares the same fatal  
4 features the ACCA's residual clause possesses, it follows that Johnson must logically apply to  
5 924(c), to invalidate its identical residual clause.

6 *B. Johnson Does Not Entitle Petitioner to Relief*

7 Petitioner argues that in light of Johnson and the chain of precedent that flows from it, his  
8 Hobbs Act robbery conviction may no longer be considered a predicate “crime of violence”  
9 warranting an enhancement under 924(c). While the Supreme Court has made clear that the  
10 924(c)(3)(B) residual clause is seemingly unconstitutional, Johnson and its progeny have no  
11 effect on Petitioner's conviction because Hobbs Act robbery is decidedly a crime of violence  
12 under the constitutional 924(c)(3)(A) force clause. On May 23, 2016, the Ninth Circuit decided  
13 Howard v. United States, 650 Fed. Appx. 466 (9th Cir. May 23, 2016, amended Jun. 24, 2016)  
14 (unpublished),<sup>1</sup> holding Hobbs Act robbery is a crime of violence under the constitutional force  
15 clause of 924(c)(3)(A). There, like Petitioner here, the defendant argued Hobbs Act robbery  
16 could be committed by “fear of injury,” thus making it not a categorical match for the  
17 924(c)(3)(A) force clause. However, the Ninth Circuit held this argument was “unpersuasive  
18 and . . . foreclosed by” the court's previous published decision in United States v. Selfa, 918 F.2d  
19 849 (9th Cir. 1990).

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22 <sup>1</sup> While Howard was not chosen for publication, it is of note because it was decided after Johnson. Thus, it  
23 validates the previous logic of Ninth Circuit decisions issued prior to Johnson, finding Hobbs Act robbery qualifies as  
24 a crime of violence under the constitutional 924(c)(3)(A) force clause. Additionally, many courts throughout the  
district have found Howard persuasive and held Hobbs Act Robbery qualifies as a crime of violence. See, e.g., U.S. v. Ali, 2017 WL 3319115 (D. Nev. Aug. 3, 2017); U.S. v. Stain, 2017 WL 2974951 (D. Nev. July 12, 2017); U.S. v. Mendoza, 2017 WL 2200912 (D. Nev. May 19, 2017); U.S. v. Hayes, 2017 WL 58578 (D. Nev. Jan 5, 2017); U.S. v. Loper, 2016 WL 4528959 (D. Nev. Aug. 29, 2016); U.S. v. Barrows, 2016 WL 4010023 (D. Nev. July 25, 2016).

1 Thus, Petitioner's Hobbs Act robbery conviction is unquestionably a qualifying crime of  
2 violence. As such, his previously-imposed sentence including the enhancement under 924(c)  
3 must stand.


4 *C. Certificate of Appealability*

5 In order for Petitioner to assert a right to appeal this final order, he must first warrant a  
6 certificate of appealability. 28 U.S.C. §2253(b), (c)(1). To do so, Petitioner must make "a  
7 substantial showing of the denial of a constitutional right," and "must demonstrate that  
8 reasonable jurists would find the district court's assessment of the constitutional claims debatable  
9 or wrong." Slack v. McDaniel, 529 U.S. 473, 483–84 (2000). Petitioner has not demonstrated a  
10 substantial showing of the denial of a constitutional right, and reasonable jurists would not  
11 debate that Petitioner's motion lacks merit. Thus, this Court denies Petitioner a certificate of  
12 appealability.

13 III. Conclusion

14 Accordingly, IT IS HEREBY ORDERED that Petitioner's Motion to Vacate, Set Aside,  
15 or Correct Criminal Convictions and Sentence Pursuant to 28 U.S.C. § 2255 (##64, 66) is  
16 **DENIED.**

17 Dated this 14th day of May, 2018.

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20 Kent J. Dawson  
21 United States District Judge  
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